

## CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

7 An act relating to construction contracting; amending s.  
8 255.05, F.S.; making certain restrictions in bonds issued  
9 for public works projects unenforceable; amending ss.  
10 489.129 and 489.533, F.S.; increasing an administrative  
11 fine under certain disciplinary proceeding provisions;  
12 amending s. 713.015, F.S.; revising a direct contract  
13 provision requirement; providing that failure to include  
14 such provision in such contracts limits certain lien  
15 rights under the contract; providing construction relating  
16 to validity and enforceability; preserving lien rights of  
17 certain persons; amending s. 713.02, F.S.; protecting the  
18 rights of certain persons to enforce certain contract,  
19 lien, or bond remedies or contractual obligations under  
20 certain circumstances; precluding certain defenses;  
21 amending s. 713.04, F.S.; revising certain final payment  
22 requirements; amending s. 713.08, F.S.; requiring a claim  
23 of lien to be served on an owner; amending s. 713.13,

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24 F.S.; revising provisions authorizing use of certain  
25 payment bonds to transfer certain recorded liens;  
26 specifying application of certain notice requirements to  
27 certain claims; revising time limits for serving certain  
28 required notices; amending s. 713.135, F.S.; revising  
29 certain notice of commencement and applicability of lien  
30 requirements for certain authorities issuing building  
31 permits; providing construction; amending s. 713.24, F.S.;  
32 preserving certain lien rights when filing a transfer bond  
33 after commencing certain lien enforcement proceedings;  
34 amending s. 713.345, F.S.; increasing certain criminal  
35 penalties for misapplication of construction funds;  
36 amending s. 713.3471, F.S.; revising a provision requiring  
37 a lender to provide notice to a property owner when making  
38 a first loan disbursement on a construction loan secured  
39 by residential real property; revising a notice form;  
40 providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Paragraph (a) of subsection (1) of section  
45 255.05, Florida Statutes, is amended to read:

46 255.05 Bond of contractor constructing public buildings;  
47 form; action by materialmen.--

48 (1)(a) Any person entering into a formal contract with the  
49 state or any county, city, or political subdivision thereof, or  
50 other public authority, for the construction of a public  
51 building, for the prosecution and completion of a public work,

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52 | or for repairs upon a public building or public work shall be  
53 | required, before commencing the work or before recommencing the  
54 | work after a default or abandonment, to execute, deliver to the  
55 | public owner, and record in the public records of the county  
56 | where the improvement is located, a payment and performance bond  
57 | with a surety insurer authorized to do business in this state as  
58 | surety. A public entity may not require a contractor to secure a  
59 | surety bond under this section from a specific agent or bonding  
60 | company. The bond must state on its front page: the name,  
61 | principal business address, and phone number of the contractor,  
62 | the surety, the owner of the property being improved, and, if  
63 | different from the owner, the contracting public entity; the  
64 | contract number assigned by the contracting public entity; and a  
65 | description of the project sufficient to identify it, such as a  
66 | legal description or the street address of the property being  
67 | improved, and a general description of the improvement. Such  
68 | bond shall be conditioned upon the contractor's performance of  
69 | the construction work in the time and manner prescribed in the  
70 | contract and promptly making payments to all persons defined in  
71 | s. 713.01 who furnish labor, services, or materials for the  
72 | prosecution of the work provided for in the contract. Any  
73 | claimant may apply to the governmental entity having charge of  
74 | the work for copies of the contract and bond and shall thereupon  
75 | be furnished with a certified copy of the contract and bond. The  
76 | claimant shall have a right of action against the contractor and  
77 | surety for the amount due him or her, including unpaid finance  
78 | charges due under the claimant's contract. Such action shall not  
79 | involve the public authority in any expense. When such work is

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80 done for the state and the contract is for \$100,000 or less, no  
81 payment and performance bond shall be required. At the  
82 discretion of the official or board awarding such contract when  
83 such work is done for any county, city, political subdivision,  
84 or public authority, any person entering into such a contract  
85 which is for \$200,000 or less may be exempted from executing the  
86 payment and performance bond. When such work is done for the  
87 state, the Secretary of the Department of Management Services  
88 may delegate to state agencies the authority to exempt any  
89 person entering into such a contract amounting to more than  
90 \$100,000 but less than \$200,000 from executing the payment and  
91 performance bond. In the event such exemption is granted, the  
92 officer or officials shall not be personally liable to persons  
93 suffering loss because of granting such exemption. The  
94 Department of Management Services shall maintain information on  
95 the number of requests by state agencies for delegation of  
96 authority to waive the bond requirements by agency and project  
97 number and whether any request for delegation was denied and the  
98 justification for the denial. Any provision in a bond furnished  
99 for public work contracts as provided by this subsection  
100 restricting the classes or persons protected by such bond or the  
101 venue of any proceeding relating to such bond is unenforceable.

102       Section 2. Subsection (1) of section 489.129, Florida  
103 Statutes, is amended to read:

104       489.129 Disciplinary proceedings.--

105       (1) The board may take any of the following actions  
106 against any certificateholder or registrant: place on probation  
107 or reprimand the licensee, revoke, suspend, or deny the issuance

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108 or renewal of the certificate, registration, or certificate of  
109 authority, require financial restitution to a consumer for  
110 financial harm directly related to a violation of a provision of  
111 this part, impose an administrative fine not to exceed \$10,000  
112 ~~\$5,000~~ per violation, require continuing education, or assess  
113 costs associated with investigation and prosecution, if the  
114 contractor, financially responsible officer, or business  
115 organization for which the contractor is a primary qualifying  
116 agent, a financially responsible officer, or a secondary  
117 qualifying agent responsible under s. 489.1195 is found guilty  
118 of any of the following acts:

119 (a) Obtaining a certificate, registration, or certificate  
120 of authority by fraud or misrepresentation.

121 (b) Being convicted or found guilty of, or entering a plea  
122 of nolo contendere to, regardless of adjudication, a crime in  
123 any jurisdiction which directly relates to the practice of  
124 contracting or the ability to practice contracting.

125 (c) Violating any provision of chapter 455.

126 (d) Performing any act which assists a person or entity in  
127 engaging in the prohibited uncertified and unregistered practice  
128 of contracting, if the certificateholder or registrant knows or  
129 has reasonable grounds to know that the person or entity was  
130 uncertified and unregistered.

131 (e) Knowingly combining or conspiring with an uncertified  
132 or unregistered person by allowing his or her certificate,  
133 registration, or certificate of authority to be used by the  
134 uncertified or unregistered person with intent to evade the  
135 provisions of this part. When a certificateholder or registrant

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allows his or her certificate or registration to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act constitutes prima facie evidence of an intent to evade the provisions of this part.

(f) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.

(g) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer.

Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

164           3. The contractor's job has been completed, and it is  
165 shown that the customer has had to pay more for the contracted  
166 job than the original contract price, as adjusted for subsequent  
167 change orders, unless such increase in cost was the result of  
168 circumstances beyond the control of the contractor, was the  
169 result of circumstances caused by the customer, or was otherwise  
170 permitted by the terms of the contract between the contractor  
171 and the customer.

172           (h) Being disciplined by any municipality or county for an  
173 act or violation of this part.

174           (i) Failing in any material respect to comply with the  
175 provisions of this part or violating a rule or lawful order of  
176 the board.

177           (j) Abandoning a construction project in which the  
178 contractor is engaged or under contract as a contractor. A  
179 project may be presumed abandoned after 90 days if the  
180 contractor terminates the project without just cause or without  
181 proper notification to the owner, including the reason for  
182 termination, or fails to perform work without just cause for 90  
183 consecutive days.

184           (k) Signing a statement with respect to a project or  
185 contract falsely indicating that the work is bonded; falsely  
186 indicating that payment has been made for all subcontracted  
187 work, labor, and materials which results in a financial loss to  
188 the owner, purchaser, or contractor; or falsely indicating that  
189 workers' compensation and public liability insurance are  
190 provided.

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(l) Committing fraud or deceit in the practice of contracting.

(m) Committing incompetency or misconduct in the practice of contracting.

(n) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.

(o) Proceeding on any job without obtaining applicable local building department permits and inspections.

(p) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(q) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender. A contractor does not commit a violation of this subsection when the contractor relies on a building code interpretation rendered by a building official or person authorized by s. 553.80 to enforce the building code, absent a finding of fraud or deceit in the practice of contracting, or gross negligence, repeated negligence, or negligence resulting in a significant danger to



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life or property on the part of the building official, in a proceeding under chapter 120.

Section 3. Paragraph (c) of subsection (2) of section 489.533, Florida Statutes, is amended to read:

489.533 Disciplinary proceedings.--

(2) When the board finds any applicant, contractor, or business organization for which the contractor is a primary qualifying agent or secondary qualifying agent responsible under s. 489.522 guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(c) Imposition of an administrative fine not to exceed \$10,000 ~~\$5,000~~ for each count or separate offense.

Section 4. Section 713.015, Florida Statutes, is amended to read:

713.015 Mandatory provisions for direct contracts.--Any direct contract between an owner and a contractor, related to improvements to real property consisting of single or multiple family dwellings up to and including four units, must contain the following provision printed in capital letters no less than the same size as the 18-point, capitalized, boldfaced type used in the body of the contract:

ACCORDING TO FLORIDA'S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A

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SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB-SUBCONTRACTORS, OR MATERIAL SUPPLIERS OR NEGLECTS TO MAKE OTHER LEGALLY REQUIRED PAYMENTS, THE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. FLORIDA'S CONSTRUCTION LIEN LAW IS COMPLEX AND IT IS RECOMMENDED THAT WHENEVER A SPECIFIC PROBLEM ARISES, YOU CONSULT AN ATTORNEY.

Nothing in this section shall be construed to adversely affect the lien and bond rights of lienors who are not in privity with the owner. This section does not apply when the owner is also a licensed contractor or a construction professional who is in the business of developing property.

Section 5. Subsection (7) of section 713.02, Florida Statutes, is amended to read:

713.02 Types of lienors and exemptions.--

(7) Notwithstanding any other provision of this part, no lien shall exist in favor of any contractor, subcontractor, or sub-subcontractor who is unlicensed as provided in s. 489.128 or s. 489.532. Notwithstanding any other provision of this part, if a contract is rendered unenforceable by an unlicensed contractor, subcontractor, or sub-subcontractor pursuant to s. 489.128 or s. 489.532, such unenforceability shall not affect the rights of any other persons to enforce contract, lien, or

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274 bond remedies and shall not affect the obligations of a surety  
275 that has provided a bond on behalf of the unlicensed contractor,  
276 subcontractor, or sub-subcontractor. It shall not be a defense  
277 to any claim on a bond or indemnity agreement that the principal  
278 or indemnitor is unlicensed as provided in s. 489.128 or s.  
279 489.532.

280 Section 6. Subsection (3) of section 713.04, Florida  
281 Statutes, is amended, and subsection (4) is added to said  
282 section, to read:

283 713.04 Subdivision improvements.--

284 (3) The owner shall not pay any money on account of a  
285 direct contract before actual furnishing of labor and services  
286 or materials for subdivision improvements. Any such ~~The~~ payment  
287 not complying with such requirement shall not qualify as a  
288 proper payment under this chapter ~~section~~.

289 (4) The owner shall make final payment on account of a  
290 direct contract only after the contractor complies with s.  
291 713.06(3)(d). Any such payment not complying with such  
292 requirement shall not qualify as a proper payment under this  
293 chapter.

294 Section 7. Paragraph (c) of subsection (4) of section  
295 713.08, Florida Statutes, is amended to read:

296 713.08 Claim of lien.--

297 (4)

298 (c) The claim of lien shall be served on the owner.  
299 Failure to serve any claim of lien in the manner provided in s.  
300 713.18 before recording or within 15 days after recording shall  
301 render the claim of lien voidable to the extent that the failure

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or delay is shown to have been prejudicial to any person entitled to rely on the service.

Section 8. Paragraph (e) of subsection (1) of section 713.13, Florida Statutes, is amended to read:

713.13 Notice of commencement.--

(1)

(e) A copy of any payment bond must be attached at the time of recordation of the notice of commencement. The failure to attach a copy of the bond to the notice of commencement when the notice is recorded negates the exemption provided in s. 713.02(6). However, if ~~such~~ a payment bond under s. 713.23 exists but was is not attached at the time of recordation of the notice of commencement, the bond may be used to transfer any recorded lien of a lienor except that of the contractor by the recordation and service of a notice of bond pursuant to s. 713.23(2). The notice requirements of s. 713.23 apply to any claim against the bond; however, the time limits for serving any required notices shall run from the later of the time specified in s. 713.23 or the date the notice of bond is served on the lienor recorded, the bond may be used as a transfer bond pursuant to s. 713.24.

Section 9. Paragraph (b) of subsection (1) and subsection (4) of section 713.135, Florida Statutes, are amended, and paragraph (e) is added to subsection (1) of said section, to read:

713.135 Notice of commencement and applicability of lien.--

329 (1) When any person applies for a building permit, the  
330 authority issuing such permit shall:

331 (b) Provide the applicant and the owner of the real  
332 property upon which improvements are to be constructed with a  
333 printed statement stating that the right, title, and interest of  
334 the person who has contracted for the improvement may be subject  
335 to attachment under the Construction Lien Law. The Department of  
336 Business and Professional Regulation shall furnish, for  
337 distribution, the statement described in this paragraph, and the  
338 statement must be a summary of the Construction Lien Law and  
339 must include an explanation of the provisions of the  
340 Construction Lien Law relating to the recording, and the posting  
341 of copies, of notices of commencement and a statement  
342 encouraging the owner to record a notice of commencement and  
343 post a copy of the notice of commencement in accordance with s.  
344 713.13. The statement must also contain an explanation of the  
345 owner's rights if a lienor fails to furnish the owner with a  
346 notice as provided in s. 713.06(2) and an explanation of the  
347 owner's rights as provided in s. 713.22. The authority that  
348 issues the building permit must obtain from the Department of  
349 Business and Professional Regulation the statement required by  
350 this paragraph and must mail, deliver by electronic mail or  
351 other electronic format or facsimile, or personally deliver that  
352 statement to the owner or, in the case in which the owner is  
353 required to personally appear to obtain the permit, provide that  
354 statement to any owner making improvements to real property  
355 consisting of a single or multiple family dwelling up to and  
356 including four units. However, the failure by the authorities to

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provide the summary does not subject the issuing authority to liability.

(e) Nothing in this subsection shall be construed to require a notice of commencement to be recorded as a condition to the issuance of a building permit.

(4) The several boards of county commissioners, municipal councils, or other similar bodies may by ordinance or resolution establish reasonable fees for furnishing copies of the forms and the printed statement provided in ~~paragraphs~~ paragraph (1)(b) and (d) in an amount not to exceed \$5 to be paid by the applicant for each permit in addition to all other costs of the permit; however, no forms or statement need be furnished, mailed, or otherwise provided to, nor may such additional fee be obtained from, applicants for permits in those cases in which the owner of a legal or equitable interest (including that of ownership of stock of a corporate landowner) of the real property to be improved is engaged in the business of construction of buildings for sale to others and intends to make the improvements authorized by the permit on the property and upon completion will offer the improved real property for sale.

Section 10. Subsection (4) of section 713.24, Florida Statutes, is amended to read:

713.24 Transfer of liens to security.--

(4) If a proceeding to enforce a transferred lien is not commenced within the time specified in s. 713.22 or if it appears that the transferred lien has been satisfied of record, the clerk shall return said security upon request of the person depositing or filing the same, or the insurer. If a proceeding

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385 to enforce a lien is commenced in a court of competent  
386 jurisdiction within the time specified in s. 713.22 and, during  
387 such proceeding, the lien is transferred pursuant to this  
388 section or s. 713.13(1)(e), an action commenced in the same  
389 county or circuit court to recover against the security shall be  
390 deemed to have been brought as of the date of filing the action  
391 to enforce the lien, and the court shall have jurisdiction over  
392 the action.

393 Section 11. Paragraph (b) of subsection (1) of section  
394 713.345, Florida Statutes, is amended to read:

395 713.345 Moneys received for real property improvements;  
396 penalty for misapplication.--

397 (1)

398 (b) Any person who knowingly and intentionally fails to  
399 comply with paragraph (a) is guilty of misapplication of  
400 construction funds, punishable as follows:

401 1. If the amount of payments misapplied has an aggregate  
402 value of \$100,000 or more, the violator is guilty of a felony of  
403 the first degree, punishable as provided in s. 775.082, s.  
404 775.083, or s. 775.084.

405 2. If the amount of payments misapplied has an aggregate  
406 value of ~~\$20,000 or more but~~ less than \$100,000, the violator is  
407 guilty of a felony of the second degree, punishable as provided  
408 in s. 775.082, s. 775.083, or s. 775.084.

409 ~~3. If the amount of payments misapplied has an aggregate~~  
410 ~~value of less than \$20,000, the violator is guilty of a felony~~  
411 ~~of the third degree, punishable as provided in s. 775.082, s.~~  
412 ~~775.083, or s. 775.084.~~

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413 Section 12. Subsection (1) of section 713.3471, Florida  
414 Statutes, is amended to read:

415 713.3471 Lender responsibilities with construction  
416 loans.--

417 (1) Prior to a lender making the first ~~any~~ loan  
418 disbursement on any construction loan secured by residential  
419 real property directly to the owner, which, for purposes of this  
420 subsection, means only a natural person, or jointly to the owner  
421 and any other party, the lender shall give the following written  
422 notice to the owner ~~borrowers~~ in bold type larger than any other  
423 type on the page:

424  
425 WARNING!

426  
427 THIS IS THE ONLY LOAN DISBURSEMENT NOTICE THAT YOU WILL  
428 RECEIVE. YOUR LENDER IS MAKING A LOAN DISBURSEMENT  
429 DIRECTLY TO YOU AS THE OWNER ~~BORROWER~~, OR JOINTLY TO YOU  
430 AND ANOTHER PARTY. TO PROTECT YOURSELF FROM HAVING TO PAY  
431 TWICE FOR THE SAME LABOR, SERVICES, OR MATERIALS USED IN  
432 MAKING THE IMPROVEMENTS TO YOUR PROPERTY, BE SURE THAT YOU  
433 REQUIRE YOUR CONTRACTOR TO GIVE YOU LIEN RELEASES FROM  
434 EACH LIENOR WHO HAS SENT YOU A NOTICE TO OWNER EACH TIME  
435 YOU MAKE A PAYMENT TO YOUR CONTRACTOR.

436 Section 13. This act shall take effect October 1, 2005.